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No. 754

In the Supreme Court of the United States

October Term, 1951

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v.

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In the Supreme Court of the United States

OCTOBER TERM, 1931

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

COMMERCIAL CREDIT COMPANY, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Fifth Circuit entered December 2, 1931, reversing the decrees of the District Court for the Southern District of Texas declaring the forfeiture of three automobiles libelled under Sections 3061 and 3062 of the Revised Statutes (U. S. C., Title 19, Secs. 482–483). The three cases were consolidated and decided together on one record in the court below and in each case the Commercial Credit

Company was the intervening lien claimant. The opinion below (R. 73) is reported in 53 F. (2d) 977. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Does Section 26 of Title II of the National Prohibition Act (U. S. C., Title 27, Section 40) provide the exclusive remedy for the forfeiture of a vehicle seized by customs officers while used in concealing and transporting intoxicating liquor imported in violation of R. S., Sections 3061 and 3062?

STATEMENT

Three vehicles, two De Soto automobiles and one Fargo Truck, were separately libelled by the United States in the Southern District of Texas for alleged violation of Sections 3061 and 3062 of the Revised Statutes.* (R. 6, 35, 56.) In each libel it was charged that the vehicle was seized while being used in concealing and transporting substantial amounts of intoxicating liquors unlawfully imported into the United States.

The respondent intervened as a lien claimant in each of the three cases, filing answers and motions to dismiss. (R. 7, 36, 58.) It pleaded that it had secured liens upon the several vehicles in good faith, that it had no knowledge that they would be

* The pertinent statutory provisions are set forth in Appendix A, pp. 6–8, *infra*.

put to an illegal use, and that the United States could proceed for forfeiture only under the National Prohibition Act.

Jury trials were waived in writing (R. 18, 46, 69), and in due course the District Court made findings of fact (R. 13, 41, 63). In each case it found that the vehicle was seized in the act of transporting liquor which had been imported illegally into the United States, and that the several liens of the claimant were acquired in good faith and without knowledge that the vehicle would be used in violation of law. But it rejected the claimant's contention that the Government's exclusive remedy was that given by Section 26 of Title II of the National Prohibition Act, and judgments of forfeiture were accordingly entered. (R. 18, 50, 69.)

In only one of the cases—the first decided—did the District Court deliver an opinion. (R. 47.) *United States* v. *One Fargo Truck*, 46 F. (2d) 171.

The claimant's appeals in the three cases were consolidated in the Circuit Court of Appeals pursuant to stipulation, and the cases docketed and considered as a single case. (R. 21–22.) That court reversed the judgments of the District Court. (R. 76.)

SPECIFICATION OF ERROR TO BE URGED

The Circuit Court of Appeals erred in holding that Section 26 of Title II of the National Prohibition Act provides the exclusive remedy for the forfeiture of a vehicle seized by customs officers while

being used in the concealment and transportation of intoxicating liquor imported in violation of R. S. Sections 3061 and 3062.

REASONS FOR GRANTING THE WRIT.

In *Richbourg Motor Co.* v. *United States,* 281 U. S. 528, this Court held that Section 26, Title II of the National Prohibition Act excluded the Government from the right to forfeit, under R. S. Section 3450, vehicles used in the removal or concealment of intoxicating liquor with intent to deprive the United States of its taxes, if the vehicle was at the time transporting intoxicating liquor in violation of the National Prohibition Act.

A great diversity of opinion has arisen among the lower Federal courts in respect of the application of the decision in the *Richbourg* case to the forfeiture of vehicles and vessels under the customs and navigation laws where transportation of liquor in violation of the National Prohibition Act is also involved. (A synopsis of the decisions appears in Appendix B, pp. 9–21, *infra.*)

The question involved herein is now before this Court in *General Motors Acceptance Corporation* v. *United States,* No. 574, on certificate from the Circuit Court of Appeals for the Ninth Circuit. In that case the libelled vehicles were seized at established ports of entry on the Mexican border after having transported liquor from Mexico into the United States. In the instant case none of the vehicles had been used in transporting the liquor into

the United States. It is believed that these differences of fact make it desirable that the instant case be also considered by this Court, so that it may have before it several of the great variety of situations arising in these forfeiture cases. It is of major importance to the Government that the doubt and confusion which now exists by reason of the divergent opinions in the lower courts should, so far as possible, be definitely removed.

Wherefore, it is respectfully submitted that the petition should be granted.

THOMAS D. THACHER,
Solicitor General.

FEBRUARY, 1932.

APPENDIX A

Sections 3061 and 3062 of the Revised Statutes (U. S. Code, Title 19, Sections 482 and 483)

SEC. 3061. Any of the officers or persons authorized to board or search vessels may stop, search, and examine as well without as within their respective districts, any vehicle, beast, or person, on which or whom he or they shall suspect there is merchandise which is subject to duty, or shall have been introduced into the United States in any manner contrary to law, whether by the person in possession or charge, or by, in, or upon such vehicle or beast, or otherwise, and to search any trunk or envelope, wherever found, in which he may have a reasonable cause to suspect there is merchandise which was imported contrary to law; and if any such officer or other person so authorized shall find any merchandise on or about any such vehicle, beast, or person, or in any such trunk or envelope, which he shall have reasonable cause to believe is subject to duty, or to have been unlawfully introduced into the United States, whether by the person in possession or charge, or by, in, or upon such vehicle, beast, or otherwise, he shall seize and secure the same for trial.

SEC. 3062. Every such vehicle and beast, or either, together with teams or other motive power used in conveying, drawing, or propelling such vehicle or merchandise, and all other appurtenances, includ-

ing trunks, envelopes, covers, and all means of concealment, and all the equipage, trappings, and other appurtenances of such beast, team, or vehicle, shall be subject to seizure and forfeiture. If any person who may be driving or conducting, or in charge of any such carriage or vehicle or beast, or any person traveling, shall willfully refuse to stop and allow search and examination to be made as herein provided, when required so to do by any authorized person, he shall be punishable by a fine of not more than one thousand dollars, nor less than fifty dollars.

Section 26, Title II, of the National Prohibition Act (Act of October 28, 1919, c. 85, Sec. 26, 41 Stat. 305, 315—U. S. Code, Title 27, Sec. 40)

When the commissioner, his assistants, inspectors, or any officer of the law shall discover any person in the act of transporting in violation of the law, intoxicating liquors in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law. Whenever intoxicating liquors transported or possessed illegally shall be seized by an officer he shall take possession of the vehicle and team or automobile, boat, air or water craft, or any other conveyance, and shall arrest any person in charge thereof. Such officer shall at once proceed against the person arrested under the provisions of this title in any court having competent jurisdiction; but the said vehicle or conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties, in a sum double the value of the property, which said bond shall be approved by said officer and shall be conditioned to

return said property to the custody of said officer on the day of trial to abide the judgment of the court. The court upon conviction of the person so arrested shall order the liquor destroyed, and unless good cause to the contrary is shown by the owner, shall order a sale by public auction of the property seized, and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure, and the cost of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise at said hearing or in other proceeding brought for said purpose, as being bona fide and as having been created without the lienor having any notice that the carrying vehicle was being used or was to be used for illegal transportation of liquor, and shall pay the balance of the proceeds into the Treasury of the United States as miscellaneous receipts. All liens against property sold under the provisions of this section shall be transferred from the property to the proceeds of the sale of the property. If, however, no one shall be found claiming the team, vehicle, water or air craft, or automobile, the taking of the same, with a description thereof, shall be advertised in some newspaper published in the city or county where taken or if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by handbills posted in three public places near the place of seizure, and if no claimant shall appear within ten days after the last publication of the advertisement, the property shall be sold and the proceeds after deducting the expenses and costs shall be paid into the Treasury of the United States as miscellaneous receipts.

APPENDIX B

United States v. *Ford Coupé Automobile*, 43 F. (2d) 212 (S. D. Fla.)

The automobile in this case was seized while transporting merchandise (liquor) which had been introduced into the United State in violation of law. The driver was indicted for transportation of liquor in violation of the National Prohibition Act. Subsequently, after the driver had forfeited his appearance bond and absconded, the United States Attorney filed a libel for forfeiture against the vehicle under Sections 3061 and 3062 of the Revised Statutes (U. S. C., Title 19, Sections 482, 483). The court held that the Government's exclusive remedy against the car was found in Section 26, Title II of the National Prohibition Act, and ordered the libel to be dismissed.

United States v. *One Studebaker Automobile*, 45 F. (2d) 430 (Ariz.)

The automobile in this case was seized in Arizona in close proximity to the Mexican border while transporting smuggled liquor. The driver was charged and convicted of violating Section 593 of the Tariff Act of 1922 (U. S. C., Title 19, Secs. 496–497). Subsequent to the termination of the criminal case the Government filed a libel for the forfeiture of the vehicle under the provisions of Sections 3061 and 3062 of the Revised Statutes

(U. S. C., Title 19, Secs. 482, 483). The Exporters Insurance Company intervened in the libel suit as a lien claimant and contended that the libel as filed would not lie and that the Government's exclusive remedy *in rem* was that defined in Section 26 of Title II of the National Prohibition Act. The court held that the forfeiture provisions of Section 26 were exclusive under the facts and ordered the libel to be dismissed.

The *Sebastopol,* 47 F. (2d) 336 (S. D. N. Y.)

The *Sebastopol,* a British vessel, was seized while transporting a large cargo of smuggled liquor in the waters of the port of New York. Her crew were charged with conspiracy to violate the liquor laws of the United States. The Government filed a libel against the vessel, claiming the penalty prescribed by Section 584 of the Tariff Act of 1922 (U. S. C., Title 19, Sec. 486). This was a proceeding authorized under Section 594 of the same Act (U. S. C. Title 19, Sec. 498). The District Court held that the Government's exclusive remedy was under Section 26 of Title II of the National Prohibition Act and ordered the dismissal of the libel. The case is now pending in the Circuit Court of Appeals for the Second Circuit on the Government's appeal.

The *Ruth Mildred,* 47 F. (2d) 336 (S. D. N. Y.)

The Auxiliary Schooner *Ruth Mildred,* a vessel licensed under United States law for fishing, was discovered transporting a cargo of intoxicating liquor in Long Island Sound and was seized therefor. A criminal prosecution for conspiracy to violate the liquor laws was instituted against her master and others unknown. The Government filed a forfei-

ture libel against the ship under Section 4377 of the Revised Statutes (U. S. C., Title 46, Sec. 325). The District Court held that the libel could not be sustained because the Government's sole rights of forfeiture were those declared in Section 26 of Title II of the National Prohibition Act. The case is now pending in the Circuit Court of Appeals for the Second Circuit on the Government's appeal.

Colon v. *Hanlon,* 50 F. (2d) 353 (C. C. A. 1st)

In this case the Motor Boat *Norberta,* a licensed vessel of the United States, was seized while transporting liquor within United States territorial waters in Porto Rico. The act constituted a violation of the provisions of her license. The four men who composed her crew were prosecuted for illegal possession and transportation of liquor in violation of the National Prohibition Act. The jury found them all "not guilty." Before the criminal proceedings were terminated the Collector of Customs, who had custody of the seized vessel, proceeded against it summarily for forfeiture under the provisions of Sections 607 and 609 of the Tariff Act of 1922 (U. S. C., Title 19, Secs. 514, 516), alleging violation of Section 4377 of the Revised Statutes (U. S. C., Title 46, Sec. 325). In due time, no claimant having appeared, the vessel was declared forfeited and was ordered to be delivered to the Customs for official use under the provisions of the Act of March 3, 1925 (U. S. C., Title 19, Sec. 522). After the acquittal in the criminal case Colon, the owner of the boat, filed proceedings in the District Court of Porto Rico, claiming that the administrative forfeiture of the boat was nugatory, that the Government's exclusive rights of forfeiture were

declared in Section 26, Title II of the National Prohibition Act, and asking the court to return the vessel to his possession. The District Court denied the owner's petition and the Circuit Court of Appeals reversed on appeal.

Corriveau v. *United States,* 53 F. (2d) 735 (C. C. A. 1st)

Two American licensed vessels, the *Overland* and the *Alibi II,* were seized and libelled by the United States for alleged violations of Section 4377 of the Revised Statutes (U. S. C., Title 46, Sec. 325), and Section 453 of the Tariff Act of 1930 (U. S. C., Title 19, Sec. 1453). The evidence indicated that they had been engaged in the liquor smuggling business, but they were not seized until the completion of their unlawful enterprise and no one was arrested thereon in the act of transporting liquor. The Circuit Court of Appeals held that the provisions of Section 26 of Title II of the National Prohibition Act were mandatory wherever they could be applied, but found that they were not applicable under the facts of the two cases. Decrees of forfeiture were entered in favor of the United States.

The *Pilot,* 43 F (2d) 491 (C. C. A. 4th)

The *Pilot* was seized in the United States territorial waters while transporting a cargo of smuggled liquor. She was a vessel of the United States licensed for fishing. The crew of the vessel was indicted for violation of Section 593 of the Tariff Act of 1922 (U. S. C., Title 19, Secs. 496, 497), and two members thereof were convicted. The vessel was libelled for forfeiture under Section 587 of the Tariff Act of 1922 (U. S. C., Title

19, Sec. 489) and Section 4377 of the Revised Statutes (U. S. C., Title 46, Sec. 325.) It was contended by the owner of the *Pilot* that the Government's exclusive rights of forfeiture were those defined in Section 26 of Title II of the National Prohibition Act, but this contention was rejected by the Circuit Court of Appeals. The court ordered the forfeiture of the vessel under the libel as filed.

United States v. *One Reo Coupé Automobile*, 46 F. (2d) 815 (Mass.)

In this case the vehicle was seized while containing smuggled liquor and was libelled for forfeiture by the United States for alleged violation of Sections 3061 and 3062 of the Revised Statutes (U. S. C., Title 19, Secs. 482, 483). The driver was prosecuted under Section 593 (b) of the Tariff Act of 1922 (U. S. C., Title 19, Sec. 497). The District Court held that the forfeiture provisions of Section 26 of Title II of the National Prohibition Act were not exclusive and authorized forfeiture under the libel as filed. The court appears to have been of the view, however, that the vehicle was not seized while it was transporting liquor.

The *Daisy T.*, 48 F. (2d) 370 (Del.)

The *Daisy T.* was a licensed vessel which was seized while adrift in Delaware Bay laden with liquor. No one was arrested. Libel for forfeiture was filed by the United States, alleging violations of several sections of the Tariff Act of 1930, the Internal Revenue Statutes, and the Navigation laws. Claimant contended that, since there was evidence of liquor transportation, the forfeiture provisions of Section 26 of Title II of the National

Prohibition Act were exclusive and that the libel should be dismissed. The District Court held that even though the facts did constitute a violation of the National Prohibition Act the Government was not thereby precluded from claiming forfeiture under the other statutes pleaded in the libel. The court decreed forfeiture of the *Daisy T.* under Section 4377 of the Revised Statutes (U. S. C., Title 46, Sec. 325).

United States v. *Hayes et al.*, 52 F. (2d) 977 (E. D. N. Y.)

The American Yacht *Surf* was seized by the Coast Guard while transporting a cargo of intoxicating liquor in United States territorial waters off Montauk Point, New York. Members of her crew, Hayes and others, were indicted in the Eastern District of New York for conspiracy to violate the liquor laws. A motion was made by the defendants to suppress the evidence. Although the forfeiture of the yacht was not in issue, the court expressed the opinion that the forfeiture provisions of Section 26, Title II, of the National Prohibition Act did not supersede or displace the forfeiture provisions of the Tariff Act.

United States v. *Buick Coupé* (S. D. Fla.), decided December 30, 1931, not yet reported, and set out in full below

UNITED STATES OF AMERICA, LIBELLANT

vs.

BUICK COUPÉ, ENGINE NUMBER 2432476, RESPONDENT

STRUM, District Judge:

In this proceeding, commenced by information of libel, the United States seeks the forfeiture of one

Buick coupé, invoking for that purpose the provisions of the customs laws, Secs. 3061, 3062, Rev. Stat.; 19 U. S. C. A. 482, 483.

Tennant Finance Corporation intervened as claimant. The matter comes up for final hearing upon an agreed statement of facts, from which the following pertinent facts are found by the Court:

On October 1, 1929, one James Provenza, while driving a Buick coupé over the highway bridge connecting the City of St. Augustine, Florida, with Anatasia Island, in St. Johns County, Florida, was stopped by customs patrol inspectors, who immediately searched said automobile and found therein a large quantity of imported whiskey fit for use, and intended for use, for beverage purposes, upon which no duty had been paid, all of which the said Provenza acknowledged, and which liquor had been unlawfully imported apparently in violation of both the Tariff Act of 1922 and the National Prohibition Act. The liquor was imported, also, with intent to defraud the United States of taxes imposed thereon by law. Said officers thereupon arrested Provenza, seized the automobile and delivered the latter to the Collector of Customs of this district, who now holds the same.

Provenza was indicted upon two counts, the first count charging unlawful transportation contrary to the National Prohibition Act, the second charging concealment of unlawfully imported liquor contrary to Sec. 593–b, Tariff Act of 1922, 19 U. S. C. A., Sec. 497. Provenza pleaded guilty to the second count. What disposition was made of the first count does not appear.

The intervening claimant is the innocent owner of a conditional sales contract, by which title to the

said automobile is reserved to said claimant, said contract being now in default and claimant entitled to possession of the car thereunder as against Provenza.

Thus is presented the much-debated question whether the United States, in seeking the forfeiture of a land vehicle, in these circumstances, must proceed under Section 26 of the National Prohibition Act, 27 U. S. C. A. 40, by which the rights of innocent owners or lienors are saved, or whether, as has been done here, the United States may proceed under the customs laws, Secs. 3061, 3062, Rev. Stat.; 19 U. S. C. A. 482, 483, which take no notice of innocent owners and lienors.

The United States relied upon *U. S.* vs. *One Ford Coupé*, 272 U. S. 321, 71 L. Ed. 279, 47 A. L. R. 1025; *U. S.* vs. *One Fargo Truck*, 46 Fed. (2) 171; *U. S.* vs. *One Ford*, 21 Fed. (2) 628.

The claimant relies upon *Richbourg Motor Co.* vs. *U. S.*, 281 U. S. 528, 74 L. Ed. 1016; *U. S.* vs. *One Whippet Sedan*, 41 Fed. (2) 496; *Colon* vs. *Hanlon*, 50 Fed. (2) 353; *U. S.* vs. *One Studebaker*, 45 Fed. (2) 430; *U. S.* vs. *Ford Coupé*, 43 Fed. (2) 212.

From these cases, and others upon the subject, including the recent decision in *Commercial Credit Co.* vs. *U. S.* (C. C. A. 5), No. 6221, decided December 2, 1931, — Fed. (2) —, the following principles are deducible, at least as to land vehicles:

First. There is an effective and distinct field of operation for each of the forfeiture provisions of the customs laws, the revenue laws, and the National Prohibition Act, found, respectively, in Secs. 3061, 3062, Rev. Stat. (19 U. S. C. A. 482, 483); Sec.

3450, Rev. Stat. (26 U. S. C. A. 1181); and Sec. 26, National Prohibition Act (27 U. S. C. A. 40). Each is operative in its own field. Neither the revenue nor the customs laws, in the respect mentioned, are repealed by Section 26 of the National Prohibition Act, but the latter "is in the nature of specific legislation which operates where it applies, by way of exception" to the general customs and revenue laws just mentioned. The mandatory provisions of Section 26, National Prohibition Act, must be followed where they apply. The latter must be accorded an effective field of operation in harmony with its purpose, as evidenced by both its terms and its legislative history. *Richbourg Motor Co.* vs. *U. S., supra; Commercial Credit Co.* vs. *U. S.* (C. C. A. 5), No. 6221, decided December 2, 1931, — Fed. (2) —; *United States* vs. *One Ford Coupé*, 272 U. S. 321, 71 L. Ed. 279, 47 A. L. R. 1025.

SECOND. The dominant character of the enterprise in which the vehicle is engaged when captured, to be deduced from the facts of each case, is the controlling test in determining the appropriate procedural statute. *U. S.* vs. *One Ford Coupé*, 272 U. S. 321, 71 L. Ed. 279, 47 A. L. R. 1025; *Two Ford Coupés* vs. *U. S.* (C. C. A. 5), No. 6008, decided November 10, 1931, — Fed. (2) —. As was said by way of illustration in the *Richbourg Motor case, supra*, "with the enactment of prohibition there can be few cases of illegal transportation which do not involve the concealment of non-tax-paid liquor." On the other hand, as was said in *U. S.* vs. *One Reo Coupé*, 46 Fed. (2) 815, "it is difficult to conceive of any case of smuggling where the element of transportation would not have been at some time present."

THIRD. If the paramount purpose of the enterprise in which the vehicle is presently engaged when captured, is to move the situs of the liquor from one place to another, for which purpose the vehicle is primarily in use as a conveyance only, the dominant character of the enterprise is transportation, and it is the mandatory duty of the United States to proceed under Section 26 of the National Prohibition Act, 27 U. S. C. A. 40. That section, in the circumstances last mentioned, furnishes the exclusive remedy for forfeiture, a condition precedent to which is the conviction of the offending person under the National Prohibition Act. This is true even though the liquor in question has an antecedent history as duty or tax un-paid liquor, imported or manufactured contrary to the customs or revenue laws above mentioned, and although there is concealment incidental to the transportation. *Richbourg Motor Co.* vs. *U. S., supra; U. S.* vs. *One Chevrolet,* 21 Fed. (2) 477, affirmed, 25 Fed. (2) 238; *U. S.* vs. *One Studebaker,* 45 Fed. (2) 430; *Commercial Credit Co.* vs. *U. S.* (C. C. A. 5), No. 6221, — Fed. (2) —. In the latter case the liquors were clearly of foreign origin and unlawfully imported, but importation had been fully accomplished and pure transportation undertaken prior to capture, so it was held that the forfeiture must proceed under Section 26, National Prohibition Act. Inability, due to circumstances, to prosecute the offender under the National Prohibition Act, may not be fatal to a libel against the vehicle under the customs or revenue laws, if the facts warrant such action. *Commercial Credit Co.* vs. *U. S.*, just cited; *U. S.* vs. *Chevrolet Truck,* 30 Fed. (2d) 830.

FOURTH. If the person in possession of the vehicle has been convicted of unlawful transportation under the National Prohibition Act, Section 26 of that Act (27 U. S. C. A. 40) mandatorily requires that the forfeiture proceed under that section, precluding a resort to the forfeiture provisions of either the customs laws or the revenue laws. *Port Gardner Inv. Co.* vs. *U. S.*, 272 U. S. 564, 71 L. Ed. 412; *Commercial Credit Co.* vs. *U. S*, 276 U. S. 226, 72 L. Ed. 541; *Commercial Credit Co.* vs. *U. S.* (C. C. A. 5), *supra; U. S.* vs. *One Ford Coupé,* 43 Fed. (2d) 212.

FIFTH. If the enterprise upon which the vehicle is presently engaged when captured is essentially the unlawful importation of liquor, or the unlawful facilitation or concealment of smuggled liquor, and the enterprise has not lost its character as such, a libel against the vehicle involved in such enterprise may be grounded upon Secs. 3061, 3062, Rev. Stat. (19 U. S. C. A. 482, 483). If there has been mere incidental and subordinate transportation solely in furtherance of such concealment, or in facilitation of the smuggling, and as an element thereof, as distinguished from transportation for other purposes, such incidental and subordinate facilitating transportation will not defeat a libel under the customs laws just mentioned, provided the enterprise still retains its primary and dominant character as an unlawful importation. In order, however, to prevail under the customs statutes, the Government must bring its case wholly and fairly within those statutes. *U. S.* vs. *Cahill,* 13 Fed. (2) 83; *U. S.* vs. *One Reo Coupé,* 46 Fed. (2d) 815; *U. S.* vs. *One Reo Sedan,* 39 Fed. (2) 120; see also as to vessels

Alkane vs. *U. S.*, 39 Fed. (2) 62, certiorari denied 281 U. S. 768, 74 L. Ed. 1175; *The Pilot*, 45 Fed. (2) 491. The same determinative principles would also apply in cases of forfeiture brought under the revenue laws, Sec. 3450, Rev. Stat. (26 U. S. C. A. 1181), where the dominant character of the enterprise is the removal, deposit or concealment of liquor with intent to deprive the United States of the tax thereon imposed by the revenue laws.

See also with reference to the applicability of Sec. 3450, Rev. Stat., where the transportation of narcotics and other contraband is involved, *U. S.* vs. *Mangano*, 299 Fed. 492.

It is conceded that the liquors here in question are of foreign origin, but how recently as to the time of capture is not shown. There is nothing to connect the vehicle with the importation, nor with the subsequent concealment, except the bare circumstance that it was proceeding northward on an extensively travelled public highway, about three or four miles distant from the coast, with imported liquors aboard it. Standing alone, that circumstance is insufficient to connect the vehicle with the importation. *Commercial Credit Co.* vs. *U. S.*, *supra*.

Although the liquors were probably unlawfully imported originally, and were tax and duty unpaid, the paramount and dominant character of the enterprise, when the vehicle was captured, was not concealment but was pure transportation, to which concealment was merely incidental. It is clearly a case in which a person was "discovered in the act of transporting" in contemplation of Sec. 26,

N. P. A., as interpreted in the *Richbourg Motor Co. case, supra.*

The fact that the driver pleaded guilty to an offense under the customs laws does not, standing alone, authorize a forfeiture under those laws, since the facts otherwise show that the vehicle was engaged in pure transportation. *U. S.* vs. *One Chevrolet,* 21 Fed. (2) 477, affirmed 25 Fed. (2) 238.

The libel is dismissed, and the vehicle awarded to the claimant.

U. S. GOVERNMENT PRINTING OFFICE: 1932